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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 GEORGE MARLIN KNIGHT,
12 Plaintiff,

NO. 2:04-cv-2054-MCE-GGH

13 v.

MEMORANDUM AND ORDER

14 NATIONAL AERONAUTICS AND
15 SPACE ADMINISTRATION,
16 Defendant.
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18 In the present action, Plaintiff George Marlin Knight
19 ("Plaintiff") sues the National Aeronautics and Space
20 Administration ("NASA") for NASA's alleged noncompliance with
21 Plaintiff's requests for information pursuant to the Freedom of
22 Information Act, 5 U.S.C. § 552 ("FOIA"). NASA now moves for
23 summary judgment in its favor, and alternatively requests that
24 the Court dismiss Plaintiff's lawsuit for lack of subject matter
25 jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and
26 12(h)(3), because of mootness, on grounds that NASA has fully
27 satisfied Plaintiff's informational demands.

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1 As set forth below, because the Court grants summary judgment for
2 NASA it need not address NASA's alternative request for
3 dismissal.¹

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5 **BACKGROUND**
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7 The Mars Exploration Program is a series of space-flight
8 projects administered for NASA by the Jet Propulsion Laboratory
9 ("JPL") near Pasadena, California.² One of the Program's
10 projects is the so-called Mars Exploration Rovers Project ("MER
11 Project"), which since 2000 has engaged in gathering scientific
12 data through the use of "rovers", or instrumented robotic grounds
13 vehicles, on Mars. "Spirit" is the name of one of the rovers
14 used to explore the Martian surface.

15 Rovers are designed to gather scientific data, but must also
16 be able to locomote, avoid hazards, deal with emergencies, keep
17 their batteries charged, recover from failures and otherwise
18 survive to carry out their scientific data-gathering mission.
19 Rovers include various scientific and engineering devices
20 designed to accomplish these objectives. The Spirit Rover has
21 exactly seven scientific devices, including two panoramic
22 cameras, as well as seven engineering cameras.

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26 ¹ Because oral argument would not be of material assistance,
27 the Court ordered this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).

28 ² The California Institute of Technology operates JPL under
a contract with NASA.

1 Information collected by the Spirit Rover is transmitted on radio
2 signals (known as "telemetry") directed to antenna complexes in
3 Barstow, California, Canberra, Australia, and Madrid, Spain.
4 Collectively the three complexes constitute the so-called Deep
5 Space Network ("DSN"). Following receipt by the DSN, the
6 telemetry data is forwarded via ground communication data lines
7 to JPL, where it is stored in packet format as a datafile or
8 "spooler". The packets are then processed into "data products"
9 housed on Operations and Science Storage Servers ("OSSs"), where
10 they are initially aggregated into Experiment Data Records
11 ("EDRs"). Payload Downlink Leads ("PDLs") monitor the flow of
12 data organized in this matter by producing a PDL Report or
13 downlink report. Those reports cover the information generated
14 by Rover instruments and devices for each Martian day.
15 Ultimately, further processing results in a second order digital
16 product known as Reduced Data Records ("RDRs").

17 On or about June 10, 2004, Plaintiff made a request to NASA,
18 under the FOIA, for data obtained by the Spirit Rover from Mars.
19 That request, which sought receipt logging procedures for the
20 information being received from Mars, read in pertinent part as
21 follows:

22 I am requesting copies of the procedures followed to
23 log the receipt of data and images from the instruments of
the Spirit Rover including:

- 24 1. Miniature Thermal Emission Spectrometer (Mini-TES)
- 25 2. Mossbauer (sic) Spectrometer (MB)
- 26 3. Apha (sic) Particle X-Ray Spectrometer (APXS)
- 27 4. Panaramic Camera
- 28 5. Navigation Cameras

1 6. Hazcams

2 7. Microscopic Imager

3 I am not requesting the actual data or images. I am
4 requesting the procedure manuals or instructions which
5 specify what the employees and contractors do to record the
6 log data and images received from the Spirit Rover.

7 In addition, Plaintiff submitted a second request to NASA, also
8 on or about June 10, 2004, for logs recording the receipt of
9 data, from the aforementioned Spirit Rover instruments, for a
10 time period encompassing the first thirty-three Martian days
11 following the Spirit Rover's touchdown on Mars.

12 According to Plaintiff, an attorney representing himself in
13 pro se, he intends to use the Spirit Rover data to publish
14 articles about Mars and NASA's handling of data from Mars (Pl.'s
15 Amended Opp. 7:6-8). Plaintiff's motivation in seeking the
16 information centers around the contention that "many
17 knowledgeable people ... think that NASA is simply not telling
18 the truth about Mars", and that there is in fact "abundant
19 evidence of life, including past intelligent life, on Mars".
20 (See November 8, 2004 email from Plaintiff to NASA's counsel in
21 this action, Exhibit 2 to Defendant's Notice of Motion filed
22 herein).

23 No records were initially produced in response to
24 Plaintiff's FOIA requests because the two requests were
25 interpreted as being identical, and because JPL determined that
26 there were no responsive receipt logging procedure records.
27 Ultimately, however, JPL's FOIA Officer realized that receipt
28 logs were also sought in addition to records pertaining to
29 receipt logging procedures.

1 Thereafter, Jim Erickson, the MER Project Manager for JPL, along
2 with the MER Project Data Operations Team, and Software Engineer
3 Kyran Owen-Mankovich, determined that certain telemetry
4 information received by the DSN was responsive to the receipt
5 logs request. JPL personnel concluded that the DSN was the only
6 likely source of this information, which was extracted from
7 instrumentation data packets. NASA subsequently produced
8 information for the first thirty-four Martian days from all
9 Spirit Rover scientific instruments, plus all engineering
10 cameras. NASA further released the Application Process
11 Identifier ("APID") numbers which identified the
12 devices/instruments responsible for generating particular subsets
13 of information.

14 In addition to the telemetry receipt log information, the
15 MER Project Principal Investigator, Steve Squyres, Ph.D, and the
16 Project's Deputy Principal Investigator, Ray Arvidsen, Ph.D., who
17 are professors at Cornell University and Washington University in
18 St. Louis, respectively, both determined that the Spirit Rover
19 PDL reports were also potentially responsive to Plaintiff's FOIA
20 receipt logs request in that they record the process of
21 monitoring and collecting "raw" data products, even if they do
22 not record the initial receipt of the data itself from Mars.

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1 Although other MER Project staff disagreed on various grounds,
2 NASA ultimately decided to give Plaintiff the benefit of the
3 doubt by releasing the PDL reports and manuals, with redactions
4 as detailed in a Vaughn Index³ spreadsheet. Certain filepaths
5 and other information was withheld for security reasons, in that
6 dissemination could potentially aid unauthorized use of the JPL
7 computer systems. Names, initials, email addresses and telephone
8 numbers were also deleted due to privacy concerns.

9 With respect to the receipt logging procedure records, once
10 NASA determined that PDL materials should be provided to
11 Plaintiff it also decided that MER PDL procedures documents
12 should also be released. The Declaration of David Lavery
13 establishes that after consultation with other MER Project
14 officials about the MER Project data flow, he determined that no
15 other categories of agency records should be responsive to the
16 receipt logging procedures request. Lavery Decl., ¶ 49, 50, 59,
17 62. Eight documents were ultimately identified as responsive and
18 were produced after redaction for security and privacy concerns.

19 Following production of the aforementioned materials,
20 Plaintiff remained dissatisfied with NASA's response to his FOIA
21 requests and instituted the present lawsuit.

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26 ³ A so-called "Vaughn Index" must identify each document
27 withheld pursuant to a FOIA request, state the statutory
28 exemption claimed, and explain how disclosure would damage
interests protected by the claimed index. See Citizens Comm'n on
Human Rights v. FDA, 45 F.3d 1325, 1326 n.1 (9th Cir. 1994)
("CCHR"), citing Bowen v. FDA, 925 F.2d 1225, 1227 (9th Cir. 1991

STANDARD

Most cases brought pursuant to the FOIA are resolved through summary judgment. Cooper Cameron Corp. v. U.S. Dep't of Labor, 280 F.3d 539, 543 (5th Cir. 2002). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

The agency responding to a FOIA request has the burden of sustaining the adequacy of its response by demonstrating that it did not improperly withhold records subject to disclosure under FOIA. 5 U.S.C. § 552(a)(4)(B); U.S. Dep't of Justice v. Tax Analysts, 492 U.S. 136, 142 n.3 (1989). The agency must "demonstrate that it has conducted a search reasonably calculated to uncover all relevant documents." CCHR, 45 F.3d at 1328, quoting Zemansky v. EPA, 767 F.2d 569, 571 (9th Cir. 1985). The "issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate." CCHR, 45 F.3d at 1328 (emphasis in original).

An agency may demonstrate the adequacy of its search with "reasonably detailed, nonconclusory affidavits submitted in good faith." Zemansky, 767 F.2d at 571.

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1 For purposes of summary judgment, affidavits describing the
2 agency's search procedures are sufficient "if they are reasonably
3 detailed in their description of the files searched and the
4 search procedure, and if they are nonconclusory and not impugned
5 by evidence of bad faith. Id. at 573. Once an agency meets its
6 initial burden in this regard, its position can be rebutted "only
7 by showing that the agency's search was not made in good faith."
8 Maynard v. CIA, 986 F.2d 547, 560 (1st Cir. 1993), citing Miller
9 v. U.S. Dep't of State, 779 F.2d 1378, 1383 (8th Cir. 1985).
10 Because agency affidavits are accorded a presumption of good
11 faith, they cannot be rebutted by "purely speculative claims
12 about the existence and discoverability of other documents."
13 Maynard, 986 F.2d at 560, quoting SafeCard Servs., Inc. v. SEC,
14 926 F.2d 1197, 1200 (D.C. Cir. 1991).

15 16 ANALYSIS 17

18 Plaintiff takes issue with the adequacy of NASA's responses
19 to his FOIA requests. First, he contends that NASA's efforts to
20 locate responsive information was not sufficiently comprehensive.
21 Next, he identifies certain categories of documents which he
22 claims should have been released but were not. Finally,
23 Plaintiff takes issue with the propriety of certain redactions
24 NASA made to the documents that were provided to him. Each of
25 those contentions will be addressed in turn.

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1 **1. Adequacy of Search**

2 Plaintiff describes NASA's method in locating responsive
3 documents as "hit or miss", and asserts that NASA unreasonably
4 relied on "informal" oral inquiries directed to key MER Project
5 members for purposes of locating documents likely to fall within
6 the purview of Plaintiff's informational requests. The Court is
7 unpersuaded by those arguments.

8 NASA's Freedom of Information Act Officer at its Pasadena
9 Management Office, Dennis B. Mahon, forwarded the two requests at
10 issue in this litigation to JPL's Contract Manager, Jody Brown,
11 upon their receipt. Ms. Brown, in turn, queried responsible
12 employees associated with the MER Project regarding their
13 knowledge of the existence or location of responsive documents.
14 Not surprisingly, Ms. Brown determined through that consultation
15 that only MER Project members would likely know about procedures
16 for logging the receipt of data and images from the Rover. Brown
17 Decl., ¶ 5. Although Mahon was initially told that no procedural
18 manuals or instructions had been prepared for purposes of logging
19 the data received from the Rover on Mars, once Mahon realized
20 that logs themselves were also requested, she instituted another
21 search. That search resulted in a conclusion that the DSN
22 Network, which received the telemetry signals from the Rover, was
23 the only likely source for responsive information as to the logs
24 themselves. Brown Decl., ¶¶ 10-12.

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1 According to Software Engineer Kyran Owen-Mankovich, the
2 telemetry information is stored on a DSN server which records and
3 associates the data, and he concluded following consultation with
4 the MER Project Manager that Plaintiff's request could be
5 interpreted to refer to that logging information. Owen-Mankovich
6 Decl., ¶¶ 5-6. Mr. Owen-Mankovich subsequently assembled this
7 information into text-file format for the Martian days requested,
8 and further generated a list of the APID codes which explained
9 the data's source. Id. at ¶¶ 6-13. As indicated above,
10 information from all seven scientific instruments on the Rover,
11 as well as its seven engineering cameras, was analyzed.⁴

12 In addition to this information, as indicated above MER
13 Project officials Steve Squyres, Ray Arvidsen, and David Lavery
14 further regarded the Spirit's PDL Reports as being potentially
15 responsive to Plaintiff's request for "logs recording the receipt
16 of data." Lavery Decl., ¶ 50. While that conclusion was
17 disputed by others on the MER Project staff, in the interests of
18 as comprehensive a disclosure as possible NASA ultimately decided
19 to release the PDL Reports. Once that conclusion was reached,
20 the subject of logging procedures was further analyzed, and after
21 consulting with others it was determined that the MER Project
22 Documentation Library was the only place likely to contain
23 downlink procedure documents, which were in turn found to consist
24 only of certain PDL procedures. Lavery Decl., ¶ 49, 50, 59, 62.
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27 ⁴ One of the engineering cameras, however, the Descent
28 Imager, was inoperable during the time period encompassed by
Plaintiff's FOIA request.

1 The Library's Document Index was searched and, as indicated
2 above, eight documents were ultimately determined to be
3 responsive and produced following redaction.

4 The search for responsive documents, then, was done in
5 consultation with the MER Project's top experts, who identified
6 and participated in searching for documents likely to be
7 responsive. While Plaintiff contends that NASA was obligated to
8 do a complete computer search in addition to drawing upon the
9 knowledge and guidance of these experts, there is no requirement
10 that an agency search all possible sources in response to a FOIA
11 request when it believes all responsive documents are likely to
12 be located in one place. Oglesby v. U.S. Dep't of Army, 920 F.2d
13 57, 68 (D.C. Cir. 1990, citing Marks v. U.S. Dep't of Justice,
14 578 F.2d 261, 263 (9th Cir. 1978). An agency may properly
15 explain by declaration or affidavit that records are not apt to
16 be found at other locations. Id. While Plaintiff takes issue
17 with the conclusions reached by top MER Project officials, it is
18 reasonable that those experts would have a solid grasp on the
19 receipt and processing of data transmitted from the Spirit Rover.
20 The Court agrees with NASA that its search in this case were
21 conducted by skilled persons working within well-defined sets of
22 data. NASA was not required to search further in order to
23 satisfy its obligations under FOIA in this matter.

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2. Documents Alleged to Have Been Improperly Withheld

In addition to challenging the adequacy of NASA's search itself, Plaintiff further identifies specific categories of documents he believes exist but were not provided. He believes that some substantive information was deleted for an "unidentified set of instruments." Opp'n, 21:12-14. He further believes that Operations and Science Storage ("OSS") serves contain rover data and logs that has not been produced. Additionally, Plaintiff claims that a log book exists for one of the items on the Rover, the Moessbauer Spectrometer. Because Plaintiff asserts that a log book indeed exists for the Spectrometer, he speculates that it is "reasonable to believe that similar log books exist for other instruments on the Rover." Opp'n, 25:26-28. Finally, Plaintiff points to several other logs that he believes are mentioned in NASA documents but have not been produced. Specifically, he cites the SDC and EVR logs as examples in that regard, and further argues that there are EDR "lists" of data and images received from Mars that should in fact have been disclosed as responsive logs.

NASA has adequately addressed each of these concerns. First, the logs of OSS activity do not record JPL's receipt of data from Mars, but instead record the process of subsequent data product generation. See Supp. Lavery Decl., ¶ 9. Consequently the OSS materials go beyond the scope of Plaintiff's FOIA request, which can only reasonably be read as encompassing logs recording receipt of data directly from the Spirit Rover to Earth.

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1 Similarly, NASA has explained that both the EVR and SDC logs do
2 not record any activity responsive to Plaintiff's request for
3 logs recording the receipt of actual data from Mars.
4 NASA further explains that what Plaintiff refers to as missing
5 data for temperature and voltage sensors associated with the
6 PANCAM Camera are indeed included within the log records
7 pertaining to the PANCAM. NASA also explains that the so-called
8 Moessbauer log book in fact merely states the settings of the
9 Moessbauer Spectrometer, is neither a log or a book, and
10 consequently is non-responsive as well. See Supp. Lavery Decl.,
11 ¶ 5, 7, 9. Finally, with respect to the alleged EDR lists, they
12 contain no facts concerning the process of taking the data
13 received from the Spirit Rover into possession. Any reasonable
14 reading of Plaintiff's FOIA requests leads to the conclusion that
15 they hinge on that process.

16 17 **3. Propriety of Redaction Procedures**

18 FOIA allows certain documents to be exempt from FOIA
19 disclosure. Items "related solely to the internal personnel
20 rules and practices of an agency", for example, are exempted
21 under 5 U.S.C. § 552(b)(2). Subdivision (b)(2) covers not only
22 internal and generally trivial matters of no real interest to the
23 public (the so-called "low 2" exemption), but also items in the
24 "high 2" category posing a potential risk to agency security
25 should they be disclosed. This latter category would include,
26 for example, information facilitating a computer hacker's access
27 to vulnerable agency databases, like file pathnames, keystroke
28 instructions, directory address and other internal information.

1 To that end, NASA redacted data from the information provided to
2 Plaintiff that showed filepaths revealing the directory structure
3 of the OSS, because such information could make it easier for an
4 intruder to gain access to the OSS and destroy or falsify
5 particular data. See Decl. of Stephen L. McConnell, NASA's Chief
6 FOIA Public Liaison Officer, ¶ 14.

7 The other FOIA authorized exemption stems from 5 U.S.C. §
8 552(b)(6), which allows the government to withhold all
9 information about individuals in "personnel and medical files and
10 similar files" if the disclosure of the information "would
11 constitute a clearly unwarranted invasion of personal privacy."
12 Mr. McConnell explains in his declaration that NASA redacted
13 certain names, initials, email addresses and telephone numbers
14 that could give members of the public identity or contact
15 information for certain non-federal employees. McConnell Decl.,
16 ¶¶ 20-21. McConnell states that he balanced the privacy interest
17 of the individuals about whom information was redacted with the
18 public interest in disclosure of the information before
19 determining that the privacy interests predominated. Id. at ¶
20 23. These redactions, along with the "high 2" redactions
21 enumerated above, were detailed in a Vaughn Index spreadsheet
22 prepared by McConnell showing the page number, an entry number
23 within the page, the FOIA exemption number or numbers, and a
24 description of the redacted material. Lavery Decl., ¶ 66;
25 McConnell Decl, ¶ 12 and Exh. 4.

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1 NASA has explained how the redactions in question contain private
2 information about the authors of the PDL Reports, their
3 replacements on the next shift, and third parties involved in the
4 payload downlink process, information that could be abused in
5 various ways through unwanted solicitation and the like.
6 Information need not be intimate or embarrassing to qualify for
7 exemption under subdivision (b)(6). U.S. Dep't of State v.
8 Washington Post Co., 456 U.S. 595, 600 (1982). The fact that
9 Plaintiff would not abuse private information obtained about the
10 concerned individuals is irrelevant since information released
11 under FOIA is in effect released to the world. See Maricopa
12 Audubon Soc'y v. U.S. Forest Serv., 108 F.3d 1082, 1088-89 (9th
13 Cir. 1997).

14 The Court believes that NASA has adequately supported,
15 through release of a Vaughn Index, the propriety of redactions to
16 the information provided to Plaintiff under his FOIA request.

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CONCLUSION

For all the foregoing reasons, the Court concludes that NASA properly complied with the two FOIA requests that are the subject of this lawsuit. As such, NASA is entitled to summary judgment in its favor. The Clerk of the Court is hereby directed to close this file.

IT IS SO ORDERED.

DATED: December 21, 2006

A handwritten signature in blue ink, appearing to read "Morrison C. England, Jr.", is written over a horizontal line.

MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE